IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5144 of 2007()

[CRIME NO.37/2007 OF KASARAGOD EXCISE RANGE]

PETITIONER/ACCUSED

PREETHA, AGED 30 YEARS, W/O.VELAYUDHAN,
BEVINJA DESOM, CHENGALA VILLAGE, KASARAGOD.

BY ADV. SRI.M.SANTHOSHKUMAR

RESPONDENTS:

THE EXCISE INSPECTOR,
EXCISE RANGE, KASARAGOD IN CRIME NO.37/07
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5144 of 2007

Dated this the 22nd day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. Her husband is the second accused. They were allegedly found to keep in their joint possession in their house 200 x 100 ml of Karnataka arrack on 13/7/2007. As only the petitioner was available in the house when the detection was made and as there was no lady official in the detecting party, she was not arrested by the officials. Investigation is in progress. Her husband is still absconding. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. She was not in conscious exclusive possession of the contraband article. In these circumstances, anticipatory bail may be granted to the petitioner, it is urged.

3. Application was opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there

are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that this is not a fit case where such extraordinary equitable discretion can or ought to be invoked. This is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007